IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY CLERK

SEAN PARK, D.D.S. *Plaintiff,*	§	A17MC0001SS
	§	
v.	§	Civil Action No. ________
	§	
TEMPLE UNIVERSITY, et al. *Defendant.*	§	

NON-PARTY TEXAS STATE BOARD OF DENTAL EXAMINERS OPPOSED

MOTION TO QUASH

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Fed. R. Civ. Pro. Rule 45(d)(3)(i) and (iii), non-party Texas State Board of Dental Examiners (TSBDE), files this opposed Motion to Quash the subpoena served on it on December 28, 2016 by Temple University in *Sean Park, D.D.S. v. Temple University, et al*, Civil Action No. 16-5025, which is pending in the United States District Court for the Eastern District of Pennsylvania. Pursuant to Federal Rule of Civil Procedure 45, this motion is being filed in the district in which compliance is required, the United States District Court for the Western District of Texas, Austin Division.

MOTION TO QUASH

A. STANDARD

Under Federal Rule of Civil Procedure 45, a district court "must quash or modify a subpoena that: "fails to allow a reasonable time to comply" or "(iii) requires disclosure of privileged or other protected matter." Fed. R. Civ. P. 45(d)(3)(A).

B. Time to Comply

Fed. R. Civ. Pro. 45 requires that a subpoena must allow a respondent a reasonable time to comply. The attached subpoena was served yesterday, December 28, 2016 with a compliance date of today, December 29, 2016. Non-party TSBDE received the subpoena in question on the day before the compliance date. Courts have held that the 14–day period for serving objections set forth in Fed. R. Civ. P. 45(c)(2)(B) is generally considered a reasonable time for compliance. See *Biological Processors of Alabama, Inc. v. N. Georgia Envtl. Services, Inc.*, 09-3673, 2009 WL 1663102, at *2 (E.D. La. June 11, 2009), *modified on reconsideration*, 09-3673, 2009 WL 2160984 (E.D. La. July 15, 2009); *Recycled Paper Greetings, Inc. v. Davis*, No. 1:08–MC–13, 2008 WL 440458, at *2 (N.D.Ohio Feb. 13, 2008); *Anderson v. Dobson*, No. 1:06CV2, 2006 WL 3390631, at *3 (W.D.N.C. Nov. 22, 2006); *Freeport McMoran Sulpher,*[1] *LLC v. Mike Mullen Energy Equip. Resource, Inc.*, No. Civ.A.03–1496, 2004 WL 595236, at *9 (E.D.La. Mar. 23, 2004). Although courts have found that for non-extensive production requests, a six or seven day compliance period can be considered reasonable, the undersigned has found no authority that would allow for a single day compliance period to be reasonable. See *Freeport McMoran Sulpher*, 2004 WL 595236, at *9.

C. Privileged Information

TSBDE asks this Court to quash the subpoena because the information requested is confidential pursuant to Texas Occupations Code section 254.006(c). That statute provides:

"Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency."

The records responsive to the subpoena include investigation files in addition to one public order. That order is available on TSBDE's website, and TSBDE will provide that document notwithstanding its objections to the timing of the subpoena.

PRAYER

TSBDE respectfully asks the Court to quash the attached subpoena for the reasons listed above. TSBDE further prays for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF CONFERENCE

I hereby certify that the undersigned conferred with counsel for Temple University on December 29, 2016, and she is opposed to this motion.

KIMBERLY FUCHS
ATTORNEY FOR TSBDE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the following counsel via e-mail on December 30, 2016 and via regular mail on January 3, 2017.

Christa F. High
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ATTORNEYS FOR DEFENDANT TEMPLE UNIVERSITY

KIMBERLY FUCHS
ATTORNEY FOR TSBDE